

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FRANCIS VINCENT GADZIK,

Plaintiff,

v.

DOLLAR THRIFTY AUTOMOTIVE GROUP
and DOLLAR THRIFTY GROUP,

Defendants.

ORDER

09-cv-434-bbc

Plaintiff filed this case on July 9, 2009 alleging that defendants terminated his employment because he filed sexual harassment complaints. Plaintiff paid the fee for filing this case and served the complaint on the defendants. Defendants answered the complaint and a preliminary pretrial conference has been scheduled for January 15, 2010 before the magistrate judge. Now plaintiff has moved for permission to dismiss his case voluntarily.

When a motion for voluntary dismissal is filed after the defendant has filed an answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendants have been required to defend

this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants.

Plaintiff has two options.

(1) If he does not want to prosecute this case any longer, he can do nothing. In that event, the suit will be dismissed with prejudice. ("With prejudice" means that plaintiff can never bring the same claims against the same defendants); or

(2) If he objects to a dismissal of his case with prejudice, he may have until January 28, 2010, to write to the court to withdraw his motion for voluntary dismissal.

In order to allow plaintiff the opportunity to respond to this order, the preliminary pretrial conference set for January 15, 2010 will be canceled. If plaintiff chooses to withdraw his motion for voluntary dismissal, the pretrial conference will be rescheduled, so that new deadlines for bringing this case to resolution can be set.

ORDER

IT IS ORDERED that the preliminary pretrial conference set for January 15, 2010 is CANCELED. Plaintiff may have until January 28, 2010, in which to withdraw his motion for voluntary dismissal. If, by January 28, 2010, plaintiff fails to advise the court that he is withdrawing his notice of voluntary dismissal, the clerk of court is directed to enter judgment

dismissing this case with prejudice.

Entered this 14th day of January, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge